

(Rev. 01-21) Complaint for Violation of Civil Rights (Prisoner)

UNITED STATES DISTRICT COURT

for the

Western District of New York

22-cv-716

Case No.

(to be filled in by the Clerk's Office)

Luis De-Jesus ^{in #} 18A1584

Plaintiff(s)

(Write the full name of each plaintiff who is filing this complaint. If the names of all the plaintiffs cannot fit in the space above, please write "see attached" in the space and attach an additional page with the full list of names.)

-v-

① Elmira C.F.
 Sarah palmer - RN 2
 ② T. Bowman - CO
 Elmira C.F.
 ③ Sgt ~~Beckler~~ Beschler
 ④ SORC Collins S.M.
 Elmira C.F.
 ⑤ John Rich
 Elmira C.F. Superintendent

Defendant(s)

(Write the full name of each defendant who is being sued. If the names of all the defendants cannot fit in the space above, please write "see attached" in the space and attach an additional page with the full list of names. Do not include addresses here.)

JURY TRIAL: Yes ☒ No ☐

COMPLAINT FOR VIOLATION OF CIVIL RIGHTS

(Prisoner Complaint)

NOTICE

Federal Rules of Civil Procedure 5.2 addresses the privacy and security concerns resulting from public access to electronic court files. Under this rule, papers filed with the court should *not* contain: an individual's full social security number or full birth date; the full name of a person known to be a minor; or a complete financial account number. A filing may include *only*: the last four digits of a social security number; the year of an individual's birth; a minor's initials; and the last four digits of a financial account number.

Except as noted in this form, plaintiff need not send exhibits, affidavits, grievance or witness statements, or any other materials to the Clerk's Office with this complaint.

In order for your complaint to be filed, it must be accompanied by the filing fee or an application to proceed in forma pauperis.

Amendment Complaint

Plaintiff alleges that defendants deprived him of his Constitutional rights to due process of law at his tier III ticket hearing, in which resulted in his confinement in the Special Housing unit (S.H.U.) Residential Rehabilitation unit (RRU) for 90 days with loss of certain privileges. As the second circuit has held, Due Process requires that a disciplinary hearing resulting in SHU/RRU confinement, an incarcerated individual must be afforded advance written notice of the charges against him and a written statement of facts finding supporting the disposition and reasons for a disciplinary action taken" (*Kalwasinski v. Morse*, 201 F.3d 103, 108, (2d cir-1999) citing (*Wolf v McDonnell*, 418, U.S. 539, 563-64 (1974)) Additionally subject to legitimate safety and correctional goals of the institution, an incarcerated individual should also be permitted to call a witness and present documentation as evidence. (citing, inter alia, *McCann v. Coughlin*, 698 F.2d, 112, 121-122 (2d cir 1983)) Thus a claim for due process accrues for a incarcerated individuals facing confinement in SHU/RRU when he knows or has reason to know of deprivation of one of the foregoing due process rights to which is entitled. See, eg. *Scott v. Gardner*, 287 F. Supp. 2d. 477, 492, (SDNY 2003) on reconsideration in part, 344 F. Supp. 2d. 421 (SDNY 2004)

As plaintiff received a 90 day SHU/RRU loss of commissary & packages & was sent to Fishkill RRU where his due process rights were violated due to the facts of March 7 2023 when plaintiff was issued a tier III ticket for R.N. Palmer allegedly saying plaintiff was masturbating because he refused medication. Shortly after C.O. T. Bowman & Sgt Beschler came and placed plaintiff in restraints and brought him to S.H.U. March 16 2023. Plaintiff attended his tier III ticket hearing with S.O.R.C. Collins and the plaintiff requested to have his witness called & S.O.R.C. Collins paused the video tape & made a application to me to plea out to a Harassment at that time plaintiff rejected because he was innocent and said absolutely not. S.O.R.C. Collins went on with my tier III hearing without calling my witness and violating my fourteenth amendment Due Process and plaintiff was given a 90 day sanction of SHU/RRU. Super Intendent of Elmira John ~~Rich~~ let my due process be violated. Plaintiff after receiving a 90 day SHU/RRU was put onto draft to Fishkill rru where plaintiff participated in the r.r.v. program and was called a pervert and while attending the rru program plaintiff was denied r.r.v. Commissary in which you are entitled to a \$90 Commissary buy every 2 weeks in which case plaintiff was only given \$5.00 Commissary buy. Also while in the rru program the Hall Act law states that it's inhumane to take away a incarcerated individuals commissary & packages while in the r.r.v. program. My family sent me a 35lb food package to Fishkill and I was denied the

package even though it came from a approved vendor
 but my package was denied because of my tier III ticket
 which stated that I was masturbating while the nurse
 asked plaintiff if he wanted his meds. After amending
 my tier III ticket in which S.O.R.C. Collins violated my
 due process by not calling my witness to testify in
 my behalf instead S.O.R.C. Collins violated my due process
 sentencing me to 90 days on fabricated allegations
 100.15 disorderly Conduct 107.11 Harassment 101.10 Sex
 offense 101.20 Lewd Conduct. After a due diligent
 amended Complaint do to the facts of plaintiff's
 tier III hearing R.N. Sara Palmer C.O. T Bowman and
 Sgt Beschler S.O.R.C. Collins and Superintendent John
~~Rich~~ of Elmira plaintiff's tier III ticket after serving
 98 days N.Y.S D.O.C.C.s granted plaintiff a reversal
 of all charges

Att. (A)

Defendant Information

Defendant No. 5
Name
Job or title
Shield Number
Employer
Address

John Rich
Superintendent
NYS DOCCS
1879 Louis Street P.O. Box 500
Elmira NY 14901-0500

☐ Individual Capacity ☒ official Capacity

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I. The Parties to This Complaint**A. The Plaintiff(s)**

Provide the information below for each plaintiff named in the complaint. Attach additional pages if needed.

Name Luis DeJesus
 All other names by which
 you have been known: Luismanuel DeJesus
 ID Number Din # 18A1584
 Current Institution Attica Correctional Facility
 Address Box 149
Attica NY ~~14011~~ 14011-0149
 City State Zip Code

B. The Defendant(s)

Provide the information below for each defendant named in the complaint, whether the defendant is an individual, a government agency, an organization, or a corporation. Make sure that the defendant(s) listed below are identical to those contained in the above caption. For an individual defendant, include the person's job or title (*if known*) and check whether you are bringing this complaint against them in their individual capacity or official capacity, or both. Attach additional pages if needed.

Defendant No. 1

Name Sarah palmer
 Job or Title (*if known*) R-N-2
 Shield Number _____
 Employer N.Y.S. D.O.C.C.S
 Address 1879 Davis Street P.O. Box 500
Elmira NY 14901-0500
 City State Zip Code
☐ Individual capacity ☒ Official capacity

Defendant No. 2

Name T Bowman
 Job or Title (*if known*) Correction officer
 Shield Number _____
 Employer NYS DOCCS
 Address 1879 Davis Street P.O. Box 500
Elmira NY 14901-0500
 City State Zip Code
☐ Individual capacity ☒ Official capacity

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Defendant No. 3

Name

Beschler

Job or Title (if known)

Sergeant

Shield Number

Employer

NYS DOCCS

Address

1879 Davis Street

P.O. Box 500

Elmira

NY

14901-0500

City

State

Zip Code

☐

Individual capacity

☒

Official capacity

Defendant No. 4

Name

Collins S.M.

Job or Title (if known)

S.O.R.C.

Shield Number

Employer

NYS DOCCS

Address

1879 Davis Street

P.O. Box 500

Elmira

NY

14901-0500

City

State

Zip Code

☐

Individual capacity

☒

Official capacity

See Att (A) other Defendant)*.5

II. Basis for Jurisdiction

Under 42 U.S.C. § 1983, you may sue state or local officials for the “deprivation of any rights, privileges, or immunities secured by the Constitution and [federal laws].” Under *Bivens v. Six Unknown Named Agents of Federal Bureau of Narcotics*, 403 U.S. 388 (1971), you may sue federal officials for the violation of certain constitutional rights.

A. Are you bringing suit against (check all that apply):

☐Federal officials (a *Bivens* claim)☒

State or local officials (a § 1983 claim)

B. Section 1983 allows claims alleging the “deprivation of any rights, privileges, or immunities secured by the Constitution and [federal laws].” 42 U.S.C. § 1983. If you are suing under section 1983, what federal constitutional or statutory right(s) do you claim is/are being violated by state or local officials?

Fourteenth ammendment due process

C. Plaintiffs suing under *Bivens* may only recover for the violation of certain constitutional rights. If you are suing under *Bivens*, what constitutional right(s) do you claim is/are being violated by federal officials?

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- D.** Section 1983 allows defendants to be found liable only when they have acted “under color of any statute, ordinance, regulation, custom, or usage, of any State or Territory or the District of Columbia.” 42 U.S.C. § 1983. If you are suing under section 1983, explain how each defendant acted under color of state or local law. If you are suing under *Bivens*, explain how each defendant acted under color of federal law. Attach additional pages if needed.

See Amendment Complaint

III. Prisoner Status

Indicate whether you are a prisoner or other confined person as follows (check all that apply):

- ☐ Pretrial detainee
- ☐ Civilly committed detainee
- ☐ Immigration detainee
- ☒ Convicted and sentenced state prisoner
- ☐ Convicted and sentenced federal prisoner
- ☐ Other (explain) _____

IV. Statement of Claim

State as briefly as possible the facts of your case. Describe how each defendant was personally involved in the alleged wrongful action, along with the dates and locations of all relevant events. You may wish to include further details such as the names of other persons involved in the events giving rise to your claims. Do not cite any cases or statutes. If more than one claim is asserted, number each claim and write a short and plain statement of each claim in a separate paragraph. Attach additional pages if needed.

- A.** If the events giving rise to your claim arose outside an institution, describe where and when they arose.

- B.** If the events giving rise to your claim arose in an institution, describe where and when they arose.

Elmira C.F. G Block 4 Company March 7th 2022

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- C. What date and approximate time did the events giving rise to your claim(s) occur?

March 7 2022 7:10 am

- D. What are the facts underlying your claim(s)? (For example: What happened to you? Who did what? Was anyone else involved? Who else saw what happened?)

I did 98 days special housing unit / KRU
because S.O.R.E. Collins violated my due process

V. Injuries

If you sustained injuries related to the events alleged above, describe your injuries and state what medical treatment, if any, you required and did or did not receive.

No physical therapy No approved medical approved
medical Boots, denied eye glasses

VI. Relief

State briefly what you want the court to do for you. Make no legal arguments. Do not cite any cases or statutes. If requesting money damages, include the amounts of any actual damages and/or punitive damages claimed for the acts alleged. Explain the basis for these claims.

Violation of due process Fourteenth Amendment punitive
damages in the Amount of 1,000,000,000

VII. Exhaustion of Administrative Remedies Administrative Procedures

The Prison Litigation Reform Act ("PLRA"), 42 U.S.C. § 1997e(a), requires that "[n]o action shall be brought with respect to prison conditions under section 1983 of this title, or any other Federal law, by a prisoner confined in any jail, prison, or other correctional facility until such administrative remedies as are available are exhausted."

Administrative remedies are also known as grievance procedures. Your case may be dismissed if you have not exhausted your administrative remedies.

A. Did your claim(s) arise while you were confined in a jail, prison, or other correctional facility?

☒ Yes

☐ No

If yes, name the jail, prison, or other correctional facility where you were confined at the time of the events giving rise to your claim(s).

Elmira C.F. G block 4 company

B. Does the jail, prison, or other correctional facility where your claim(s) arose have a grievance procedure?

☒ Yes

☐ No

☐ Do not know

C. Does the grievance procedure at the jail, prison, or other correctional facility where your claim(s) arose cover some or all of your claims?

☒ Yes

☐ No

☐ Do not know

If yes, which claim(s)?

fourteenth ammendment due process

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- D. Did you file a grievance in the jail, prison, or other correctional facility where your claim(s) arose concerning the facts relating to this complaint?

☒ Yes

☐ No

If no, did you file a grievance about the events described in this complaint at any other jail, prison, or other correctional facility?

☒ Yes

☐ No

- E. If you did file a grievance:

1. Where did you file the grievance?

fishkill C.F. And Attica C.F. and Elmira C.F.

2. What did you claim in your grievance?

\$5.00 commissary | No packages RRU | vision problems |
RRU cold showers | staff mistreatment | No physical therapy or medical boots

3. What was the result, if any?

nothing

4. What steps, if any, did you take to appeal that decision? Is the grievance process completed? If not, explain why not. (Describe all efforts to appeal to the highest level of the grievance process.)

appeal to superintendent then ~~Appealed~~ to Central office Review Committee (CORC)
was

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F. If you did not file a grievance:

1. If there are any reasons why you did not file a grievance, state them here:

2. If you did not file a grievance but you did inform officials of your claim, state who you informed, when and how, and their response, if any:

G. Please set forth any additional information that is relevant to the exhaustion of your administrative remedies.

(Note: You may attach as exhibits to this complaint any documents related to the exhaustion of your administrative remedies.)

VIII. Previous Lawsuits

The “three strikes rule” bars a prisoner from bringing a civil action or an appeal in federal court without paying the filing fee if that prisoner has “on three or more prior occasions, while incarcerated or detained in any facility, brought an action or appeal in a court of the United States that was dismissed on the grounds that it is frivolous, malicious, or fails to state a claim upon which relief may be granted, unless the prisoner is under imminent danger of serious physical injury.” 28 U.S.C. § 1915(g).

To the best of your knowledge, have you had a case dismissed based on this “three strikes rule”?

☐ Yes

☒ No

If yes, state which court dismissed your case, when this occurred, and attach a copy of the order if possible.

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- A. Have you filed other lawsuits in state or federal court dealing with the same facts involved in this action?

☐ Yes

☒ No

- B. If your answer to A is yes, describe each lawsuit by answering questions 1 through 7 below. *(If there is more than one lawsuit, describe the additional lawsuits on another page, using the same format.)*

1. Parties to the previous lawsuit

Plaintiff(s) _____

Defendant(s) _____

2. Court *(if federal court, name the district; if state court, name the county and State)*

3. Docket or index number

4. Name of Judge assigned to your case

5. Approximate date of filing lawsuit

6. Is the case still pending?

☒ Yes

☐ No

If no, give the approximate date of disposition. _____

7. What was the result of the case? *(For example: Was the case dismissed? Was judgment entered in your favor? Was the case appealed?)*

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IX. Certification and Closing

Under Federal Rule of Civil Procedure 11, by signing below, I certify to the best of my knowledge, information, and belief that this complaint: (1) is not being presented for an improper purpose, such as to harass, cause unnecessary delay, or needlessly increase the cost of litigation; (2) is supported by existing law or by a nonfrivolous argument for extending, modifying, or reversing existing law; (3) the factual contentions have evidentiary support or, if specifically so identified, will likely have evidentiary support after a reasonable opportunity for further investigation or discovery; and (4) the complaint otherwise complies with the requirements of Rule 11.

A. For Parties Without an Attorney

I agree to provide the Clerk's Office with any changes to my address where case-related papers may be served. I understand that my failure to keep a current address on file with the Clerk's Office may result in the dismissal of my case.

Date of signing:

8/13/23

Signature of Plaintiff

Printed Name of Plaintiff

Luis DeJesus

Prison Identification #

Din # 18A1584

Prison Address

Attica Correctional Facility Box 149

Attica

City

NY

State

14011-0149

Zip Code

B. For Attorneys

Date of signing:

Signature of Attorney

Printed Name of Attorney

Bar Number

Name of Law Firm

Address

City

State

Zip Code

Telephone Number

E-mail Address

Print

Save As...

Add Attachment

Reset

ATTICA CORRECTIONAL FACILITY

BOX 149

ATTICA, NEW YORK 14011-0149

NAME:

Luis Betegas

DIN:

18A1584

~~SECRET~~

LEGAL MAIL

AUG 17 2023

ATTICA
CORRECTIONAL FACILITY

NEOPOST

08/14/2023

US POSTAGE

\$001.11¹⁰



ZIP 14011
041M11284163

Clerk, U.S. District Court
United States Court house
Buffalo, NY. 14203-3350